

REMARKS

General:

Claims 1-3, 7-8, 11-13, 15-16 and 18-24 were pending in this application at the time of the final Office Action. Claims 1-3, 7-8, 11-13, 15-16 and 18-24 stand rejected.

Claims 1-3, 7-8, 11-13, 15-16 and 18-24 are canceled without prejudice, and new claims 25-44 are filed herewith. These new claims generally correspond to the prior claims. A list of the relationship between the present and prior claims is attached hereto. This listing also shows a markup of the amendments to the claim language.

No new matter has been added by this amendment.

35 U.S.C. § 112:

Claims 1-3, 7-8, 11-13, 15-16 and 18-24 were rejected on the ground that various terms were alleged to lack antecedent basis. The terms listed by the examiner have been carefully reviewed, and these rejections are believed to be moot in view of the new claims filed herewith. Should the examiner have further concerns about the clarity of the language, a fuller and clearer statement of grounds is respectfully solicited.

35 U.S.C. § 102:

Claims 1-3, 7-8, 11-13, 15-16 and 18-24 stand rejected as anticipated by U.S. Pat. No. 5,566,624 (Brown et al.). The rejection is traversed as being merely cumulative of the rejection over U.S. Pat. No. 5,950,545 (Shuert), which was overcome by applicants' response filed December 8, 2003. Brown's pallet is essentially identical to Shuert's. The examiner does not identify any difference between the two references that would justify resurrecting (in the fifth office action) a rejection that was overcome previously (in response to the second action). The prior arguments (successfully) distinguishing the invention over Shuert are hereby imported by reference since they directly distinguish the invention over Brown.

New independent claims 25, 30, 33, 39, 40, 41 and 42 recite wells with a plurality of flexible ribs or fins adapted to deform when a foot is inserted into the well. Brown, like Shuert, discloses a structure that is deliberately designed for rigidity. "To achieve increased stiffness of each foot, the side wall 40 is formed with a series of ribs 41." Brown at col. 3, lines 64-66.

Claims must be given their broadest *reasonable* interpretation. MPEP § 2111, emphasis added. It is not reasonable to interpret a claim in a way that simply ignores the entire clause "flexible ribs ... adapted to deform" on the ground that absolute rigidity is impossible. The

presence of that clause must be construed as requiring a substantial degree of flexibility and deformability, beyond what is inescapable in a “rigid” structure.

The words of a claim must also be given their plain meaning. MPEP § 2111.01. It is not in accordance with the plain meaning of common English words to equate a structure described as “flexible” with a structure described as “rigid.” Further, Brown is directed to producing a rigid structure. There is nothing in Brown that would suggest to a person of ordinary skill in the art to construct a well with flexible, rather than rigid, ribs.

The difference in the claim language over the references cited is significant because “flexible ribs … adapted to deform in response to the engagement with the foot” allow for (1) tolerance, if the dimensions of the article being shipped do not exactly match those of the base, and (2) cushioning of the foot of the article against jolts or impacts to the base. Brown’s rigid sockets would not provide the advantages of the claimed structure, and there is no suggestion to modify Brown’s pallet to provide the advantages that flow from the claimed structure.

The examiner argues that “virtually anything will be bent or flexed if enough pressure is applied to it,” and cites to *Fredman v. Harris-Hub Co., Inc.*, 163 USPQ 397 (N.D.Ill 1969). The examiner appears to have misunderstood *Fredman*. What the *Fredman* Court actually said [and what the Court of Appeals approved, see *Fredman v. Harris-Hub Co., Inc.*, 169 USPQ 768, 769-770, 772 (7th Cir. 1971)] is as follows:

The Court finds that the words "flexibility" or "rigidity" are relative terms, particularly since virtually anything will flex if enough pressure is applied to it. The Court finds that the Harris-Hub rails do not meet the first requirement of Claim 4 in that such rails are not designed to flex at their end portions and are not capable of being resiliently laterally deflected. *Id.*, 163 USPQ at 401.

The *Fredman* case turns on the distinction between flexible and non-flexible parts: “the major portions of the rails ‘will not flex’ … whereas the purely vertical end portions … may be deflected as much as one inch.” *Id.*, 169 USPQ at 769-770. In the present case, as in *Fredman*, the “flexible” ribs recited in the claims are clearly distinguished in their context from the inflexible structures of Shuert and Brown. It is believed that the present invention, as now claimed in claims 25-44, is new and non-obvious over Brown.

New claims 42-44 are further limited to a base comprising a frame surrounding a central opening. Basis for this feature is found in Figure 1 of the drawings and in the associated description, see especially paragraph [0024]. There is no disclosure or suggestion of this feature in Brown and, given the structure and intended function of Brown's pallet, it would not have been obvious to provide a central opening in Brown's pallet. For this reason also, it is believed that the present invention, as claimed in claims 42-44, is new and non-obvious over Brown.

Conclusion:

In view of the foregoing, reconsideration of the examiner's rejections and objections, and an early notice of allowance of claims 25-44, is earnestly solicited.

Respectfully submitted,

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1-24 (Canceled)

25 [[3]]. (New) A base for supporting an article during shipping, comprising:
a frame having one or more side edges, each side edge adapted to extend along a
side of an article,

the base having one or more sockets having internal sidewalls defining open
ended wells in the frame that form receptacles for receipt and engagement of the feet of the
article;

a plurality of flexible ribs extending along the internal sidewalls of the sockets
and projecting inwardly into the wells of the sockets, the ribs adapted to deform in response to
the engagement with the foot feet of the article upon insertion into the sockets;

~~wherein the one or more sockets define open ended wells in the frame for receipt
and engagement of the feet of the article.~~

26 [[1]]. (New) A base as claimed in claim 25 for supporting a four-sided article,
wherein the frame has four sides, each side adapted to extend along one of the four sides of an
the article with the relatively outer peripheral edge portions of the base positioned adjacent the
bottom surfaces of the article.

27 [[2]]. (New) A base as claimed in claim 26, wherein the an outer peripheral
edge of each of the sides of the frame is recessed relative to the an inner portion of the base along
the corresponding side, creating a gap between the base and the adjacent portions of the article
along each side thereof.

28 [[7]]. (New) A base as claimed in claim 25, wherein the ribs in the one or more
sockets are vertically positioned and project radially inward from the sidewalls.

29 [[8]]. (New) A base as claimed in claim 28, wherein the ribs are beveled at
their upper edges adjacent the open end of the socket wells.

30 [[11]]. (New) A base as claimed in claim 25, wherein the ribs are positioned
axially within the wells of the sockets.

31 [[12]]. (New) A base as claimed in claim 25, wherein the a bottom edges of the
ribs is are separated from the bottom walls of the sockets.

32 [[13]]. (New) A base as claimed in claim 25, wherein ~~the~~ a relatively outer peripheral edge portion of at least one side of the frame is recessed relative to inner portions of the frame along the at least one side, the recess of the outer edge portion along the at least one side creating a gap between the base and adjacent portions of the article.

33 [[21]]. (New) A base for shipping and supporting an appliance, comprising:
a frame having one or more side edges, each side edge adapted to extend along a side of an appliance,

the base having at least one or more sockets socket that defines an open ended well well for receipt of the foot a foot of the appliance;

a plurality of flexible ribs extending along ~~the~~ an internal sidewall of the socket and projecting inwardly into the well of the socket, the ribs adapted to deform in response to ~~the~~ engagement with the foot of the appliance upon insertion into the socket to grip the foot of the appliance in the socket to maintain the appliance and the base together.

34 [[15]]. (New) A base as claimed in claim 33, wherein ~~the~~ a relatively outer peripheral edge portion of at least one side edge of the frame is recessed relative to an inner portion of the base ~~along the at least one side~~, the recess of the outer edge along the at least one side edge creating a gap between the base and an adjacent ~~the~~ side of the appliance supported thereon and permitting the outer edge portion to bow upwards without damaging the side of the appliance.

35 [[16]]. (New) A base as claimed in claim 34, wherein ~~the~~ a relatively outer peripheral edge of each of the side edges of the frame is recessed relative to ~~the~~ inner portions thereof, creating a gap between the base and ~~the~~ adjacent portions of the appliance along each side thereof.

36 [[19]]. (New) A base as claimed in claim 33, wherein the ribs are positioned axially within the well of the socket.

37. (New) A base as claimed in claim 33, wherein the ribs are beveled adjacent the upper edge of the socket to facilitate insertion of the foot of the appliance into the socket.

38. (New) A base as claimed in claim 33, wherein ~~the~~ bottom edges of the ribs are separated from ~~the~~ a bottom wall of the socket.

39 [[18]]. (New) A base for shipping and supporting an appliance ~~of the type~~ having an internal structural frame and at least one outer skin panel portion attached thereto, the base comprising:

a frame having one or more side edges adapted to extend adjacent one or more sides of the structural frame portion or outer skin panel portion of the appliance,

~~the a relatively outer peripheral edge portion of at least one side edge of the frame being recessed relative to inner portion of the base along the at least one side, the recess of the outer edge portion along the at least one side creating a gap between the base and an adjacent structural frame or skin panel portion of the appliance supported thereon and permitting the outer edge portion to bow upwards without damaging the adjacent structural frame or skin panel portion of the appliance,~~

~~one or more sockets in the frame that define open ended wells for receipt of the one or more feet of the appliance, and~~

~~a plurality of flexible ribs extending along the internal sidewalls of the one or more sockets and projecting inwardly into the wells of the one or more sockets, the ribs adapted to deform in response to the engagement with the foot one or more feet of the appliance upon insertion into the one or more sockets, wherein the ribs are beveled adjacent the upper edges of the one or more sockets to facilitate insertion of the one or more feet foot of the appliance into the one or more sockets.~~

40 [[20]]. (New) A base for shipping and supporting an appliance ~~of the type~~ having an internal structural frame and ~~at least one an outer skin panel portion~~ attached thereto, the base comprising:

a frame having one or more side edges adapted to extend adjacent one or more sides of the structural frame ~~portion~~ or outer skin panel ~~portion~~ of the appliance,

~~the a relatively outer peripheral edge portion of at least one side edge of the frame being recessed relative to an inner portion of the base along the at least one side, the recess of the outer edge portion along the at least one side creating a gap between the base and an adjacent part of said structural frame or skin panel portion of the appliance supported thereon and permitting the outer edge portion to bow upwards without damaging the adjacent structural frame or skin panel portion of the appliance,~~

at least one or more sockets socket in the frame that defines an open ended wells well forming receptacles a receptacle for receipt of the feet a foot of the appliance, and

a plurality of flexible ribs extending along the internal sidewall of the socket and projecting inwardly into the well of the socket, the ribs adapted to deform in response to the engagement with the foot of the appliance upon insertion into the socket, wherein the bottom edges of the ribs are separated from the a bottom wall of the socket.

41 [[22]]. (New) A base for shipping and supporting an appliance, comprising:

a frame having one or more side edges, each side edge adapted to extend along a side of an appliance,

the base having one or more sockets that define open ended wells for receipt of the feet of the appliance;

a plurality of flexible fins extending along the an internal sidewall of the socket and projecting inwardly into the well of the socket, the fins adapted to deflect sideways in response to the engagement with the foot of the appliance upon insertion into the socket.

42. (New) A base for shipping and supporting an appliance, comprising:

a frame having sides surrounding an opening, each side of the frame adapted to extend along a side of an appliance,

the frame having at least one socket that has an internal sidewall defining an open ended well for receipt of a foot of the appliance;

a plurality of flexible fins extending along the internal sidewall of the socket and projecting inwardly into the well of the socket, the fins adapted to deflect sideways in response to engagement with the foot of the appliance upon insertion into the socket.

43. (New) A base as claimed in claim 42, wherein an outer peripheral edge of at least one said side of the frame is recessed relative to an inner portion of said one side, creating a gap between the base and an adjacent portion of the article along said one side.

44. (New) A base as claimed in claim 43 for supporting a four-sided article, wherein the frame has four sides, each side adapted to extend along one of the four sides of the article, and an outer peripheral edge of each of the sides of the frame is recessed relative to an inner portion of the base along the corresponding side, creating a gap between the base and adjacent portions of the article along each side thereof.